IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 25 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GEETABEN SARDARSINH JADAV – Applicant(s)

Versus

MANSUKHBHAI PREMJIBHAI PATEL & 1 - Respondent(s)

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Appearance :

MR JN JADEJA for Applicant(s) : 1,
MR SK GADHAVI for Respondent(s) : 1,
MS.HANSA PUNANI, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 13/03/2007

ORAL JUDGMENT

Rule. Service of rule is waived by Mr.S.K.Gadhavi, learned advocate and Ms.Hansa Punani, learned APP for respondents no.1 and 2 respectively.

2. The petitioner- original applicant-wife is before this Court being aggrieved by the order passed by the Family Court No.3 at Ahmedabad in Criminal Misc. Application No.1943 of 2004 dated 22nd November 2005.

The learned Judge of the Family Court was pleased to reject the application filed under section 125 of the Code of Criminal Procedure seeking maintenance. The ground on which the application is rejected by the learned Judge is that the applicant herein- wife is not able to substantiate her case that the writing of divorce ('Choota Cheda') was obtained by the husband, respondent no.1 herein under coercion. The learned Judge of the Family Court was of the opinion that if there was any coercion for obtaining that writing, the applicant must have filed complaint or must have challenged the same by filing civil proceedings.

Every time, it does not happen that the party aggrieved of any such act is able to take recourse to the remedy available under law. From the figure of the amount mentioned in writing, i.e. Rs.31,000/- does not appear to be any way appropriate for giving up all the rights of maintenance as one time settlement and therefore, the learned Judge of the Family Court ought to have appreciated that part. Only because there is a writing which is relied upon by the husband- respondent no.1 herein, it cannot be said that the applicant is divorced and therefore, she is not entitled to get any maintenance under sec.125 of the Code.

3. Heard the learned advocate for the applicant and respondent no.1 herein. Taking into consideration the nature of the controversy involved in the matter, without going deep into the matter any further, leaving the scope of the parties wide open, the order under challenge dated 22.11.2005 in Criminal Misc. Application No.1943 of 2004 rendered by the learned Judge, Family Court No.3, Ahmedabad is quashed and set aside and the matter is remanded to the Family

Court for its trial afresh. Taking into consideration that the matter is old enough, the Family Court is directed to give priority to the matter and decide the same as expeditiously as possible, but not later than 31st August 2007.

In order to avoid further delay, **3rd April 2007** is fixed as date of hearing before the Family Court. On that day, both the parties shall appear before the Family Court.

Barring payment of Rs.15,000/- made before this Court by respondent no.1 to the applicant herein, no other payment is made towards maintenance ever since the wife has separated. The application was filed in the year 2004. Therefore, it is directed that respondent no.1 shall pay Rs.5000/- (Rupees five thousand only) on or before 28th March 2007, preferably by Money Order. The Criminal Revision Application is allowed. Rule is made absolute to the aforesaid extent.

4. This order is passed in presence of the applicant and respondent no.1, who are present before

the Court, and their respective advocates assured the Court that they will instruct their respective clients to remain present before the Family Court on 3rd April 2007.

(RAVI R. TRIPATHI, J.)

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